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of 3300- (9)

IN THE HIGH COURT OF CHHATTISGARH AT:
BILASPUR

S.A. No. 571/2004

Valued at RS.33600.00
Court fee affixed RS.3300.00

APPELLANT: / Subhash Verma, aged 58 years, son of late Shri Gyan Chandra Verma, resident of Ramchandra Lal ka Bada, Ramnagar ward, Gondpara, Bilaspur, Tehsil and district Bilaspur (Chhattisgarh)

(Appellant/defendant)

VERSUS

RESPONDENTS:

1. Vishwanath Prasad Sinha, aged 65 years, son of Shri Brijendra Prasad Sinha
2. Smt. Krishna Sinha, aged 58 years, wife of Shri Vishwanath Prasad Sinha, through Shri Vishwanath Prasad Sinha, son of Shri Brijendra Sinha,

Both resident of Ramnagar ward, Gondpara Bilaspur, Tehsil Bilaspur, district Bilaspur (C.G.)

(Respondents/Plaintiffs)

SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE, 1908.

P.R. No. 2746/04
Presented by Shri. K. K. Jaiswal
dated 04-12-04

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A. 571/04 सन् 200-

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	18.02.2005:- Shri Somnath Verma, learned counsel for the appellant. Shri Rupesh Shrivastava, learned counsel for the respondents. The instant second appeal has been preferred by the appellant/defendant against the judgment and decree dated 09.08.2004 passed by the District Judge, Bilaspur in M.J.C.No. 29/2004 and by which the appeal against the judgement and decree dated 15.12.2003 passed in Civil suit No. 20-A/1996 by Civil Judge, Class-I, Bilaspur has been dismissed on the ground that the appeal preferred by the appellant was barred by law of limitation. The parties hereinafter shall be described as they were described before the trial Court. The case of the plaintiff before the trial Court was that he is the owner of the suit property described in the map attached with the plaint which he purchased on 26.11.1980 for a consideration of Rs. 21,000/- in the name of his wife i.e. plaintiff No. 2 and he is in possession of the suit property. However, the defendant had encroached upon some portion of the suit property which is marked with red ink, by construction of a slab over the same and has threatened to block the drainage if the plaintiff dared to oppose his illegal act. Thus, the above suit has been filed for vacant possession of the suit land, declaration and perpetual injunction against the blockage of the drain.	

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आदेश पत्रक (पूर्वानुबन्ध)

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	The defendant in his written statement did not specifically denied the ownership of the property and even he did not categorically denied the contents as alleged in paragraph-3 of the plaint. However, he denied that he had encroached upon any part of the land of the plaintiff or blocked the drain of the plaintiff. He submitted that he is in possession of his ancestral property. The defendant further stated that he was in possession of the suit property since his birth. On the basis of the pleadings of the respective parties, the Court below framed issues and after recording the statements of ,PW-1, Awadesh Kumar, plaintiff/PW-2, Vishwanath Pratap Sinha, DW-1 Subhash Verma, and DW-2 Vishnu Yadav, decreed the suit. The finding of the trial Court was that the plaintiff No. 2, is the owner of the suit property which was purchased by registered sale deed on 26.11.1980 and the portion described by red ink is the part of the property which was purchased by the plaintiff as such, the plaintiffs are entitled for the declaration of title. It has been further held that on the disputed portion of the property, the defendant had encroached by casting a slab and the suit was decreed accordingly and the decree for perpetual injunction was granted in favour of the plaintiff No. 2 against the defendant, holding that the defendant shall not interfere with the possession of the plaintiff over the suit land and after demolition of the constructed ^{portion} property, the suit land be handed over to plaintiff No.2. Against the above judgment, the defendant preferred an appeal which was filed after the prescribed period of limitation and the learned first Appellate Court dismissed the application filed for condonation of	

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आदेश पत्रक (पूर्वानुबद्ध)

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	delay, on the ground that the reason assigned by the appellant for filing the appeal belatedly is not appropriate and sufficient. Learned counsel for the appellant/defendant by the instant appeal has challenged the judgment and decree passed by the trial Court on the ground that the description of the property given in the plaint does not correspond with the sale deed of Annexure P/11 as in the above sale deed, the plot number is not mentioned and therefore, in the absence of identity of the property which was not proper for both the Courts below to decree the suit and they ought to have dismissed the suit on this ground alone and for this purpose the learned counsel for the appellant/defendant has relied upon the decision reported in <u>1997(1) W.N. No. 128</u> in the case of <u>Ramgopal Vs. Surat Ram</u>. The submission of the appellant/defendant in this regard has no force as the plaintiff has clearly averred in paragraph-3 of the plaint the description of the property which was purchased by him through registered sale deed giving the boundaries of the disputed property and has described the same in the map attached with the plaint. The appellant/defendant has not specifically denied the pleading contained in paragraph-3 of the plaint and therefore, at this stage it can not be said that identity of the suit land is not established. The other ground raised by the appellant/defendant that the appeal preferred by the him has been dismissed by the first Appellate Court solely on the ground that it has been filed after the prescribed period of limitation whereas the first Appellate Court ought to have allowed the application under Section 5 of the	

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आदेश पत्रक (पूर्वानुबद्ध)

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	Limitation Act as the reason assigned for delay in filing the appeal was proper and therefore, learned first Appellate Court ought to have allowed the application for condonation of delay. However, from the perusal of the impugned order, it is clear that the application for condonation of delay under Section 5 of the Limitation Act was preferred by the appellant/defendant without filing any affidavit in support of the same and learned Appellate Court has dismissed the application on the ground that even according to the admission of the appellant/defendant, he was present in Bilaspur from 26th December, 2003 to first week of January, 2004 and as such in between he could have preferred the appeal as the certified copy of the judgment was duly delivered to the him and on the above ground the appeal has been dismissed as barred by law of limitation. Even otherwise, taking into consideration the evidence available on record, the suit has been rightly decreed by the trial Court after objective consideration of the evidence available on record and after going through the pleadings of the respective parties, it does not call for any interference and also there is no substantial question of law for admitting the instant second appeal for hearing. Therefore, the instant second appeal is liable to be dismissed and it is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs. With the aforesaid observations, M.C.P.No. 1769/2004 stands disposed of.	

Sd/-
Dhirendra Mishra
Judge

4/3/05
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